Supreme Court, U.S.
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No. 96-680

In the Supreme Court of the United States

OCTOBER TERM, 1996

SANDRA M. SKEEN AND ROBERT L. PEELER, SR.,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WALTER DELLINGER
Acting Solicitor General
JOHN C. KEENEY
Acting Assistant Attorney General
KRISTINA L. AMENT
Attorney
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTIONS PRESENTED

1. Whether, in a prosecution under 18 U.S.C. 1014 for making false statements to federally insured banks, the district court erred by declining to submit the issue of the materiality of the false statements to the jury.

2. Whether the district judge was required to recuse himself from petitioners' trial because he and members of his family attended the same university where one of the witnesses worked.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is unpublished, but the decision is noted at 86 F.3d 1154 (Table).

JURISDICTION

The judgment of the court of appeals was entered on June 3, 1996. The petition for a writ of certiorari was filed on September 3, 1996 (a Tuesday following a federal holiday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of South Carolina, petitioner

Peeler was convicted on nine counts of making false statements to federally insured banks for the purpose of influencing the actions of those banks, in violation of 18 U.S.C. 1014, and two counts of bankruptcy fraud, in violation of 18 U.S.C. 152. He was sentenced to 63 months' imprisonment, to be followed by five years' supervised release. Peeler Judgment at 1-4. Petitioner Skeen was convicted on eight counts of making false statements to federally insured banks for the purpose of influencing the actions of those banks, and one count of bankruptcy fraud. She was sentenced to 40 months' imprisonment, to be followed by three years' supervised release. Skeen Judgment at 1-4. The court of appeals affirmed. Pet. App. 1a-7a.

1. In 1975, petitioner Peeler founded Carolina Leasing, Inc. (Carolina Leasing), which operated as an automobile leasing company. Petitioner Skeen was Vice President of Carolina Leasing. Subsequently, Peeler spun off several businesses from Carolina Leasing, and those businesses also employed Skeen. In August 1991, three of Peeler's companies filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code, and a trustee was appointed. In early 1992, the bankruptcy trustee reported that he suspected bankruptcy fraud on the part of Peeler's companies. The matter was referred to the United States Attorney's Office and the FBI. Peeler Presentence Report (PSR) at 6-7.

Investigation into petitioners' activities revealed that they had made false statements to federally insured banks. In applying for bank loans, petitioners presented falsified invoices reflecting overvaluation of the purchase price of automobiles owned by Carolina Leasing. PSR at 9-10.

In addition, Peeler had obtained a loan in the amount of $36,617.48 from South Carolina National Bank by falsely representing that he had a lease agreement with Clemson University to lease automobiles to the coaching staff. He provided forged lease agreements purportedly signed by the assistant athletic director at Clemson. PSR at 10. At trial, the government called Len Gough, former assistant athletic director at Clemson. Gough testified he never entered into a lease arrangement with Peeler but instead provided Peeler with a sky box at Clemson's Death Valley in exchange for the use of automobiles owned by Carolina Leasing, Inc. Gough denied signing the lease agreements used by Peeler to obtain the loan. *Ibid.*

2. With respect to the false statements counts charging violations of 18 U.S.C. 1014, the district court gave the following jury instructions:

> Title Eighteen, United States Code, Section 1014 reads in relevant part, and I quote, "Whoever knowingly makes any false statements or report or willfully overvalues any land, property or security for the purpose of influencing in any way the action of any institution, the accounts of which are insured by the Federal Deposit Insurance Corporation, upon any application, advance, discount, purchase agreement, repurchase agreement, commitment or loan or any change or extension of any of the same by renewal, deferment of action or otherwise or the acceptance, release or substitution of security therefore shall be guilty of a crime against the United States."

> Now, there are four essential elements which comprise the crime. The Government must prove beyond a reasonable doubt, first, that the defendant made a false statement to a federally insured bank. Second, that the defendant did so for the purpose of influencing the bank's action. Third, that the statement was false as to a material fact. And fourth, that the defendant made the false statements knowingly.
>
> * * * * *
>
> Now, the court has determined as a matter of law that the statements which the Government has alleged the defendants made in their dealings with the various banks would involve material facts. Therefore, the only part of the third element that you must decide is whether those statements, if made, were false.

Transcript of Jury Charge at 10-12. Petitioners did not object to the decision by the court to rule on the materiality of the false statements. Pet. 11.

3. Petitioners filed a notice of appeal, and their counsel filed a brief in the court of appeals pursuant to *Anders* v. *California*, 386 U.S. 738 (1967). Counsel informed the court that he believed petitioners had no meritorious issues on appeal. The brief, however, highlighted three issues pertaining to sentencing for the court's consideration. Petitioner Peeler filed a supplemental brief complaining of numerous errors at trial and sentencing, including prejudicial and biased conduct by the district court, error in denial of a motion for mistrial, and ineffective assistance of counsel. The court of appeals rejected all of petitioners' claims. Pet. App. 1a-7a. Petitioners did not

raise on appeal the claims they present in the instant petition.

ARGUMENT

1. Petitioners contend (Pet. 11-13) that the materiality of the false statements is an element of the offenses charged under 18 U.S.C. 1014, and therefore that the district court should have submitted that issue to the jury. On November 4, 1996, this Court heard oral argument in *United States* v. *Wells*, No. 95-1228. That case presents the question whether the materiality of a false statement or report is an element of the offense described by Section 1014. On November 15, 1996, the Court granted the petition for certiorari in *Johnson* v. *United States*, No. 96-203. That case presents the issue whether, when a defendant fails to object at trial to the failure to submit the element of materiality to the jury, a court of appeals should affirm the judgment under the plain error rule, Fed. R. Crim. P. 52(b), when no reasonable jury would have found the false statement to be immaterial.

It is unnecessary, however, for the Court to hold this petition pending the decisions in *Wells* and *Johnson*. Because petitioners did not object at trial or on appeal to the court's failure to submit the issue of materiality to the jury, the claim is not properly asserted here absent exceptional circumstances. *United States* v. *Lovasco*, 431 U.S. 783, 788 n.7 (1977); see *Department of Revenue of Montana* v. *Kurth Ranch*, 511 U.S. 767, 772 n.9 (1994); *United States* v. *Alvarez-Sanchez*, 511 U.S. 350, 360 n.5 (1994); *United States* v. *Williams*, 504 U.S. 36, 40-41 (1992). Petitioners have shown no exceptional circumstances.

2. Petitioners also contend for the first time (Pet. 13-15) that the district judge had a conflict of interest

that should have prevented him from hearing their case. Petitioners argue that because the trial judge and his children attended Clemson University, the judge was unable to consider impartially the testimony of Gough concerning the Clemson leases. Thus, they argue that the trial judge was required to recuse himself from consideration of this case pursuant to 28 U.S.C. 455(a). That statute provides: "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." That fact-bound issue does not merit this Court's review.

The fact that the trial judge and his children attended Clemson University does not establish that the judge was biased in the matter of the Clemson leases. The status of an alumnus of a university does not involve an affiliation that would lead a reasonable observer to conclude that a judge would be incapable of impartiality in matters in which the university is implicated. In any event, having also failed to raise this matter at trial or in the court of appeals, petitioners cannot do so before this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WALTER DELLINGER
Acting Solicitor General
JOHN C. KEENEY
Acting Assistant Attorney General
KRISTINA L. AMENT
Attorney

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